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Supreme Court, U.S.
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IN THE UNITED STATES SUPREME COURT

October Term 2004

Petitioner

ALFRED . SKERLE . #CASE 04-779

Reply Brief to a Brief in Opposition to a

–PETITION FOR WRIT OF CERTIORARI

TO THE PA. STATE SUPREME COURT, / Superior Court

Case # 438 MAL 2004

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Marbury v. Madison 5 U.S. 1 Cranch 137 (1803)

United States v. Cantor, 469 F2d 433 (3rd Cir 1972)

Weaver v. Graham 101 S.Ct. 960 1981

In their Brief in Opposition

First of all the Respondents did not challenge the Jurisdiction of this Honorable Court. Second the Respondents were unable to answer any of the four Questions presented – (from the Original Petition for a Writ of Certiorari) . The only possible exception to this is (Question # 3 Original Petition) (Colloquy) . Here in the Respondents (Orange Brief) they are attempting to confuse this court with (their statement- Respondents Brief Page 6 – Second Paragraph) "Petitioner claims in his Petition for a Writ of Certiorari before this Honorable Court that his guilty plea was improperly accepted for what he characterizes as an improper colloquy." Emphasis here on Colloquy "No on the Record Colloquy exists" The Respondents are attempting to fool the Justices of this Honorable Court into a belief that an on the Record Colloquy actually exists.

Absence of Federal Issues ?

Respondents attempt to state that Federal issues needed to be raised at the State appellate Court Process. The fact is that Miranda (A Federal issue is absent from the Arrest Record) A Colloquy - and A Factual Basis for a Plea have all been raised at the trial court and since the trial court (they have simply been ignored by the entire Pa. Appellate Court system) In addition Attorney Harris should know with his experience with appeals that when dealing with a plea (Any Plea instead of a trial) several Federal- Constitutional Issues are involved as they are waived at the plea.

See: Boykin v. Alabama # 5 & 7

This Court wrote " a plea of Guilty involves more than a voluntary confession made in open Court "it supplies evidence and verdict " a defendant who enters such a Plea simultaneously waives several constitutional rights including his privilege-

- against compulsory self incrimination his right to trial by jury, and his right to confront his accusers. For waiver to be valid under Due Process Clause it must be an intentional relinquishment or abandonment of a known right or privilege "

Boykin (# 7) "A majority of criminal convictions are obtained after a plea of guilty. If these convictions are to be insulated from attack, the trial court is best advised to conduct an on the record examination which should include inter- alia an attempt to satisfy itself that the defendant understands the nature of the charges, his right to a jury trial, the acts sufficient to constitute the offenses for which he is charged and the permissible range of sentences. "

(petitioners- words)-A time range that the accused has to make an appeal should also be included. The new Restrictions need fair warning.

On page 8 of the Orange Brief lines 9th & 10 th- up from the bottom The Respondents assert that Pennsylvania Constitution and the United States Constitution are identical. We contest this averment as the Pa. Constitution deals with Civil law and Contracts where the U.S. Constitution deals- with the rights of the accused in criminal proceedings.

And the Amendment was one that placed an additional burden on the Petitioner's attempt for relief, only the P.C.R.A. that existed in 1994 can apply to the instant matter.

Further the 1994 provisions of law are all that would apply-since a full and proper Colloquy (1994)-would not have been able to disclose the 1995 Amendment.

And under the 1994 provision there was not the same time restriction. In 1994 proof of induced confession and ineffective defense counsel are all that would have been needed to grant relief.

With 1995 law being retrospective to the 1994 conviction ex -post facto is controlling here.

Since the conviction /confession took place on October 3 1994 and the P. C.R.A. Amendment was effective on January 15, 1996.

And this Futuristic Amendment was one that placed an additional burden on the Petitioners attempt for relief, only the P.C.R.A. that existed in 1994 can apply to the instant matter.

From the case law provided (in the Brief in opposition) (state case law shown - First page) is about the Second P.C.R.A. petition. The instant matter is the First P.C.R.A. Petition with a state law that required a hearing.-

- (no hearing occurred)

(Court of Common Pleas Judge Ward Clark)

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For us if, the P.C.R.A. law is held as valid. The concept of a valid conviction being absent from No factual basis for a plea, (Note * Respondents did not dispute the fact that the Plea was based on hearsay.) No Miranda, and No Colloquy, The time clock for the first P.C.R.A. Petition should have never started.

Further if the PCRA is saying ex post facto is the law in Pa. Then this law should be ruled Unconstitutional. (Marbury v. Madison)

The additional burden on the accused must be brought out at a Colloquy on the record; not from the instant case where a whole court system avoids this federal right of due process.

CONCLUSION

The Petition for a Writ of Certiorari when granted will cure the defects in the Pa. Court system in application of it's laws. And the application of an Ex-post Facto law concerning Criminal Appeals; Including the P.C.R.A. Law itself if this Honorable Court deems necessary. This will grant relief for Petitioner.

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